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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 ANDREW CONEV,

8 Plaintiff,

9 v.

10 SNOHOMISH COUNTY JAIL, et al.,

11 Defendants.

Case No. C17-1907 RSM-BAT

**ORDER DECLINING SERVICE
AND GRANTING LEAVE TO
AMEND**

12 On December 19, 2017, Andrew Conev, a Snohomish County Jail detainee filed letter in
13 case number C17-1725 RSM. *See* Dkt. 9 (C17-1725 RSM). Because the letter asserted Mr.
14 Conev was raising “a new claim” it was assigned the case number herein. The letter alleges on
15 December 7, 2017, Snohomish County Jail released Mr. Conev temporarily for a psychiatric
16 evaluation. Mr. Conev indicates he was prescribed “a couple different meds,” and that the jail is
17 not dispensing them as prescribed. He claims he and his lawyer “are taking this to court next
18 week.” He also alleges he feels the medical staff is retaliating against him for making
19 complaints about his medications.

20 The Court declines to serve the complaint because it fails to state a claim upon which
21 relief may be granted, and is subject to dismissal. It also appears Mr. Conev has not exhausted
22 his administrative remedies. Additionally, this Court may be required to abstain from addressing
23 the claim because as Mr. Conev alleges, he and his lawyer are taking the matter to Court.

1 However, because Mr. Conev is proceeding *pro se*, the Court grants him leave to file by
2 **January 31, 2018**, an amended complaint, or to show cause why the complaint should not be
3 dismissed.

4 **DISCUSSION**

5 To sustain a civil rights action under § 1983, Mr. Convev must show (1) he suffered a
6 violation of rights protected by the Constitution or created by federal statute, and (2) the
7 violation was proximately caused by a person acting under color of state or federal law. *See*
8 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

9 **A. Liability of Parties**

10 Mr. Conev has not named the specific defendants against which he brings his claims. If
11 he seeks to sue Snohomish County, he must show the county itself violated his rights or that it
12 directed its employees to do so. *Bd. of County Comm'rs of Bryan County v. Brown*, 520 U.S.
13 397, 404 (1994). Under this theory of liability, the focus is on the county's "policy statement,
14 ordinance, regulation, or decision officially adopted and promulgated by that body's Officers."
15 *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell*, 436 U.S. at 690). The
16 county is not liable for the acts of its employees under a respondeat superior theory of liability.
17 *See Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978). Therefore, in order to sue
18 Snohomish County, Mr. Conev must allege facts showing that any constitutional deprivation he
19 suffered was the result of a custom or policy of the county.

20 Is he seeks to sue a county employee who is a supervisor, Mr. Conev must allege facts
21 showing that the individual defendant supervisor participated in or directed the alleged violation,
22 or knew of the violation and failed to act to prevent it. *See Barren v. Harrington*, 152 F.3d 1193,
23 1194 (9th Cir.1998), *cert. denied*, 525 U.S. 1154 (1999); *Ashcroft v. Iqbal*, 556 U.S. 662, 129

1 S.Ct. 1937, 1948 (2009) (vicarious liability is inapplicable to a § 1983 suit).

2 And finally, if Mr. Conev seeks to sue an individual employee of the jail, Mr. Conev
3 must prove that a particular defendant has caused or personally participated in causing the
4 deprivation of a particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355
5 (9th Cir. 1981); *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977). Mr. Conev must set
6 forth specific facts showing a causal connection between each defendant's actions and the harm
7 allegedly suffered by plaintiff. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

8 The complaint does not meet these standards. Instead it alleged a denial of adequate
9 medical care. This is not sufficient to state an Eighth Amendment violation. Mr. Conev may file
10 an amended complaint to provide additional facts to support this claim, including the nature of
11 his injuries and which individual or individuals knew of his injuries and failed to provide
12 treatment.

13 **B. Exhaustion**

14 Mr. Conev should also note the The Prison Litigation Reform Act ("PLRA") provides
15 that:

16 No action shall be brought with respect to prison conditions under section 1983 of
17 this title, or any other Federal law, by a prisoner confined in any jail, prison, or
18 other correctional facility until such administrative remedies as are available are
19 exhausted.

20 42 U.S.C. § 1997e(a). The exhaustion requirement normally applies to any suit, brought under
21 any federal statute, regarding conditions of imprisonment, including "all prisoners seeking
22 redress for prison circumstances and occurrences . . . whether they involve general circumstances
23 or particular episodes, and whether they allege excessive force or some other wrong." *Porter v.*
Nussle, 534 U.S. 516, 532 (2002); *Woodford v. Ngo*, 548 U.S. 81, 85 (2006) (same). Mr. Conev
should therefore in this amended complaint set forth whether he has exhausted the administrative

1 remedies available to him or not.

2 **C. Pending State Matter**

3 Mr. Conev also states that he and his lawyer are taking this matter to court. The Court
4 interprets this to mean that the allegations Mr. Conev raises are related to his pending state
5 criminal case. Normally, federal courts must abstain from interfering with pending state criminal
6 proceedings. *See Younger v. Harris*, 401 U.S. 37 (1971). *Younger* abstention is appropriate
7 where: (1) there are ongoing state judicial proceedings, (2) the proceedings implicate important
8 state interests, and (3) there is an adequate opportunity in the state proceedings to resolve federal
9 questions. *Dubinka v. Judges of the Superior Ct.*, 23 F.3d 218, 223 (9th Cir. 1994). In his
10 amended complaint Mr. Conev should set forth whether his claims here are being addressed as
11 part of his criminal matter, in which case this Court should abstain from interfering, or whether
12 his claims are not being addressed by the state court and may properly be brought before this
13 court.

14 **CONCLUSION**

15 The Court **DECLINES** to serve the amended complaint which as discussed above is
16 deficient. However, the Court grants plaintiff permission to submit an amended complaint to
17 attempt to cure the above-mentioned deficiencies by **January 31, 2018**. The amended complaint
18 must carry the same case number as this one.

19 Mr. Conev should note that the amended complaint replaces the original complaint and that
20 the Court will review the case solely based upon the allegations set forth in the amended
21 complaint. **If no amended complaint is timely filed, or if an amended complaint is filed that**
22 **is still deficient, the Court will recommend that this matter be dismissed under 28 U.S.C. §**
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1 **1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted.**

2 The Clerk is directed to provide a copy to Mr. Conev.

3 DATED this 9th day of January 2018.

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5 BRIAN A. TSUCHIDA
6 United States Magistrate Judge
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